

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner, : Case No. 3:08-cv-280

- VS -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent. :

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**ORDER REGARDING CASE SCHEDULING**

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This case is before the Court *sua sponte* to consider measures to expedite its decision.

**Procedural History**

This capital habeas corpus case was opened in August, 2008, but the Petition was not filed until March 10, 2009 (Doc. No. 10). Consideration was stayed pending exhaustion of Gapen's then-pending Application for Reopening before the Ohio Supreme Court (Doc. No. 19). The stay was vacated June 11, 2009 (Doc. No. 29) and the First Amended Petition filed July 14, 2009 (Doc. No. 31). By agreement of the parties, the Return of Writ was not filed until five months later on December 10, 2009 (Doc. No. 33). By further agreement of the parties, the Reply was not filed for another ten months or on October 8, 2010 (Doc. No. 50).

Petitioner's Motion for Discovery was also filed October 8, 2010 (Doc. No. 51). That

Motion became ripe on December 20, 2010, and on December 23<sup>rd</sup> the Magistrate Judge granted it in part and denied it in part, setting a deadline of April 30, 2011 (Doc. No. 71). However, Petitioner objected and Judge Rice was unable to reach the Objections until October 31, 2011, when he sustained them in part and allowed ninety days for depositions of the trial jurors (Doc. No. 98). Seventy days later Gapen moved to expand the scope of discovery and amend the Petition (Doc. Nos. 105, 106). That Motion became ripe on January 17, 2012, and on January 18<sup>th</sup> the Magistrate Judge granted the Motion to Amend in part and denied expansion of the scope of discovery (Doc. No. 110). Petitioner objected and on March 8, 2012, Judge Rice sustained the Objections in part, permitted a second amended petition, and granted Petitioner an additional ninety days to depose jurors on the new 27<sup>th</sup> and 28<sup>th</sup> grounds for relief (Doc. No. 122).

One year ago on July 2, 2012, Petitioner moved for leave to file a third amended petition (Doc. No. 148). That Motion was granted in part and denied in part on December 7, 2012 (Doc. No. 169). Petitioner objected, but later abandoned Ground Thirty-One and on January 28, 2013, the Magistrate Judge ordered the third amended petition filed **forthwith** (Doc. No. 175). On the basis of the consent of Respondent's counsel, that filing deadline has been extended four times, so that the third amended petition is now due July 15, 2013.

In general the Court encourages counsel to be collaborative and S. D. Ohio Civ. R. 7.3 even mandates consultation on motions for extension of time. In contrast to hard-fought battles over discovery, counsel in this case have been very accommodating to one another regarding extensions of time. However, the Court believes the time has come to expedite the decision of this case.

**Present Schedule**

Third Amended Petition to be filed	July 15, 2013
Return to Third Amended Petition	September 17, 2013
Reply	November 14, 2013

(Per Notation Order granting Doc. No. 186.)

Given the length of time this case has been pending, **no further extensions of time for any purpose will be granted merely because opposing counsel agrees to them.** That is, the Magistrate Judge will not treat consent under S. D. Ohio Civ. R. 7.3 as *per se* good cause for an extension of time.

July 2, 2013.

s/ *Michael R. Merz*  
United States Magistrate Judge